

**UNITED STATES DISTRICT COURT  
THE EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

<b>ZECO, LLC, d/b/a ZEE COMPANY,</b>	)	
	)	
<b>Plaintiff/</b>	)	<b>No 1:21-cv-00079</b>
<b>Counterclaim Defendant</b>	)	
<b>v.</b>	)	
	)	
<b>ENVIRO TECH CHEMICAL</b>	)	
<b>SERVICES, INC.,</b>	)	<b>JURY TRIAL DEMANDED</b>
	)	
<b>Defendant/</b>	)	
<b>Counterclaimant</b>	)	

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**JOINT STATUS UPDATE**

Per the Court’s request (ECF No. 99), Defendant Enviro Tech Chemical Services Inc. (“Enviro Tech”) and Plaintiff Zeco, LLC d/b/a Zee Company (“Zee”) (collectively, “the Parties”), by and through the undersigned counsel, jointly provides the following update regarding the impact of the Eastern District of Arkansas’s Markman Order in *Enviro Tech Chemical Services, Inc. v. Safe Foods Corporation*, No. 4:21-cv-000601-LPR (E.D. Ark.). In the Order, the U.S. District Court for the Eastern District of Arkansas found that the claim terms “about [pH range]” and “antimicrobial amount” of U.S. Pat. No. 10,912,321 were indefinite. A consequence of those findings is that the Eastern District of Arkansas will likely enter a Final Judgment invalidating the claims of the ’321 patent. If the United States Court of Appeals for the Federal Circuit affirms, all claims in this case will be invalid.

While the Arkansas court has not entered final judgment yet, both Enviro Tech and Safe Foods agree it should do so. (Arkansas Doc. 83, 84.) The parties in the Arkansas litigation have been ordered to submit briefing by February 20, 2023, on how to configure the matter for entry of

judgment. After that Enviro Tech intends to appeal the judgment to the Court of Appeals for the Federal Circuit. (*See* Arkansas Doc. 84.)

In light of these facts, Enviro Tech and Zeco request that this case be stayed pending resolution of the invalidity issues in the Arkansas litigation. District courts have the inherent authority to manage their dockets with a view to efficient and expedient resolution of cases, including the power to stay proceedings pending resolution of a parallel action. *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) (*citing* *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). The Parties agree that a stay in this case is appropriate for numerous reasons.

Affirmance by the Federal Circuit would invalidate all claims and effectively end this litigation. An invalid claim cannot be infringed. *Richdel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579 (Fed. Cir. 1983). A reversal or partial reversal, too, would narrow the scope of this case at least by clarifying issues of claim construction. Discovery continues, and the Parties have expert discovery, summary judgment, and trial ahead of them. (*See* ECF 83.) As such, awaiting direction from the Federal Circuit before proceeding further would conserve judicial and party resources.

Pending the Court's approval, the Parties suggest a stay of this litigation. The Parties further propose that the stay require Enviro Tech to advise this Court within five business days of a decision from the Federal Circuit or upon settlement of the dispute by the Parties to the Arkansas litigation.

Counsel for the Parties are available for a status conference if the Court believes one would be beneficial.

Dated: January 27, 2023

Respectfully submitted,

/s/ Adam E. Szymanski

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